

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2412 OF 2022

Kum. Yasmin Salim Shaikh

@ Smt. Yasmin Imam Shaikh

..Petitioner

V/s.

State of Maharashtra and Ors.

..Respondents

Mr. Ramchandrra K. Mendadkar a/w Mr. C.K. Bhangoji for
the Petitioners.

Mr. V.S. Gokhale, 'B' Panel Counsel for Respondents/State.

CORAM : R.D.DHANUKA AND
M.M.SATHAYE, JJ.

RESERVED ON : 02nd JANUARY 2023
PRONOUNCED ON : 07th FEBRUARY 2023

: JUDGMENT (PER: M.M.SATHAYE, J.):

1. Rule. Rule is made returnable forthwith. Learned AGP for the Respondent/State waives service. Taken up for final hearing by consent of parties.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioner is seeking a writ of certiorari for quashing and setting aside the impugned order dated 17.01.2022 passed by the Respondent No.2 (The District Caste Certificate Scrutiny Committee, Sangli) with

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further direction to Respondent No.2 to issue certificate of validity in respect of the Petitioner's caste certificate.

3. Few facts necessary for disposal of this matter are stated below:

(i) The Petitioner claims to be belonging to Dhawad community which is notified as 'Other Backward Classes' in State of Maharashtra. It is the case of the Petitioner that after due inquiry, a caste certificate was issued in her favour on 18.02.2011. It is contended that the Petitioner wanted to contest the election and therefore, she moved Respondent No.3 Committee for verification of caste certificate and submitted all the documents in support of her caste claim.

(ii) Respondent No.2 Committee referred the Petitioner's caste claim to the Vigilance Cell for conducting school and home inquiry and accordingly, the Vigilance Cell conducted detailed inquiry and submitted its report dated 13.10.2021.

(iii) It is the case of the Petitioner that despite all the documents submitted by her, as also the report of the Vigilance Cell, by the impugned order dated 17.01.2022, her caste claim was invalidated.

(iv) It is further contended that in the meantime, the Petitioner had contested the election and declared a member in Grampanchayat Ward No.1, Dhawadwadi, Atpadi, Sangli which is reserved seat for woman under OBC category.

4. Learned counsel for the Petitioner, Mr. Mendadkar submitted that since the Petitioner is Muslim by religion, there is no likelihood of finding caste entry in the old records related to Petitioner and therefore, the report of the home inquiry by Vigilance Cell conducted as per Rule 13(a) to (d) of the Caste Certificate Rules of 2012 (hereinafter “the said Rules” for short) assumes importance. He contended that in case of Muslims, the possibility of mention of caste is rare because, unlike Hindus, caste is not recognized in Muslims. He further contended that the Vigilance Cell has inquired with the respectable person from the village of the Petitioner, who had stated that family of the Petitioner belongs to Dhawad caste and traditional occupation of the family is manufacturing iron equipment for agriculture. He also contended that Respondent No.2 Committee has mechanically recorded findings that the caste claim of the Petitioner is not proved, without properly appreciating the Vigilance Cell report.

5. Learned counsel for the Petitioner relied upon an old communication/letter dated 26.07.1996 issued by the under-Secretary of the State of Maharashtra to the Director of Social Welfare Department, in which it is directed that since possibility of finding mention of caste is rare in the case of muslims, while verifying their caste claims, this peculiar situation should be considered.

6. Learned counsel for the Petitioner invited our attention to various documents produced in support of Petitioner's case. He also relied upon following Judgments of this Court:

- (i) *Aasiya Mahamadyunnus Gavandi V/s. District Caste Certification Verification Committee in Writ Petition No. 145 of 2021.*
- (ii) *Akhtar K. Jamadar V/s. State of Maharashtra, 2021(6) Bom. C.R. 487.*
- (iii) *Bismilla Mohammedsab Sayyed (Mujawar) @ Bismilla Allabaksh Shikkalgar v/s. Divisional Caste Certificate Committee No.1, Solapur in Writ Petition No. 10577 of 2013.*
- (iv) *Kum. Fehmi Mushtak Mukadam V/s. The State of Maharashtra and Ors. in Writ Petition No. 8144 of 2014.*
- (v) *Jamadar Mehaboob Ghudubai V/s. State of Maharashtra in Writ Petition No. 11394 of 2016.*
- (vi) *Shri. Imram A. Ajij Shaikh V/s. State of Maharashtra & Ors. in Writ Petition No. 8044 of 2013.*
- (vii) *Ashvini Ramchandra Bhogam V/s. State of Maharashtra and Ors. 2017(2) Mh. L.J.*

7. Per Contra, Mr. Gokhale, learned AGP for the Respondent State has supported the impugned order dated 17.01.2022. He invited our attention to the Affidavit-in-Reply filed by the Member Secretary, District Caste Scrutiny Committee, Sangli affirmed on 27.06.2022. He contended

that the Petitioner's school leaving certificate, Petitioner's father's school leaving certificate do not mention the caste of the Petitioner as Dhawad. He contended that documents which are prior to deemed date i.e. 13.10.1967 are considered but they do not show caste of Petitioner's relatives as Dhawad. He further contended that in the school leaving certificate of the Petitioner's cousin grandfather, mentioning his birth date as 09.01.1930 and date of school admission as 05.02.1936, but caste mentioned is Musalman and not Dhawad. On these grounds, the learned AGP for the Respondents supported the impugned order.

REASONS AND CONCLUSION

8. We have carefully considered the submissions of the Petitioner and Respondents. We have also considered various judgments relied upon by the Petitioner. Perused the record.

9. Perusal of school leaving certificates produced by Petitioner (claimed to be of father, grand father and cousin-grand-father) do not show Dhawad caste. But, it cannot be disputed that in case of Muslims, there are no castes or sub-castes, as in the case of Hindus, and therefore there is no likelihood of finding any entry of caste in the old records, in case of a Muslim.

10. In the case of **Bismilla Mohammedsab** (supra) the facts are that the Petitioner therein had initially claimed Shikalgar caste and thereafter different caste certificate was procured for Mujawar caste. In that case, this Court had found, on facts, that Vigilance Cell had not done proper inquiry in terms of Rule 13(1)(d) of the said Rules and it was also found, on facts, that the Caste Scrutiny Committee had not applied the affinity test. The facts of the present case are clearly different.

11. In the case of **Jamadar Mehaboob** (supra) also, it was found by this Court, on facts, that the Caste Scrutiny Committee had not given reasons for not agreeing with Vigilance Cell report, apart from observing that it is not in agreement therewith. In the case of **Aasiya Mahamadyunnus** (supra) also, this Court found, on facts, that Caste Scrutiny Committee had not assigned any reason why it was unable to agree with the Vigilance Cell Report. In the case of **Imram A. Ajj** (supra), the Caste Scrutiny Committee had not considered the Vigilance Cell report and had relied upon documents only. In the case of **Akhtar K. Jamadar** (supra) also this Court found, on facts, that Caste Scrutiny Committee had not considered the Vigilance Cell report. In the case of **Fehmi Mushtak Mukadam** (supra), this Court found, on facts, that Vigilance Cell report was convincing and hence, Order was issued validating caste certificate.

12. So far as the case of **Ashvini Ramchandra Bhogam** (supra) is concerned, it is held by this Court that the findings recorded by the Vigilance Cell are not binding on the Scrutiny Committee *per se*, but a duty is cast upon the Scrutiny Committee to record reasons for discarding such report or disagreeing with it. This proposition can not be disputed and we agree with it.

13. It also cannot be disputed and we agree that Caste Scrutiny Committee must consider the Vigilance Cell report and must give reasons if it is disagreeing with the Vigilance Cell report.

14. Viewed from the aforesaid legal position, we now proceed to scan the Vigilance Cell report as well as the impugned Order of the Scrutiny Committee in the facts of this case.

15. Careful perusal of the impugned order dated 17.01.2022 shows that the Caste Scrutiny Committee has not only considered the Vigilance Cell report, but has also considered all the documents produced by the Petitioner serially and document-wise. Apart from the document at serial No. 9 in the table given therein, no other document of either Petitioner or her relatives show the surname or caste as Dhawad and therefore, they are rightly rejected. The said

document at serial No. 9 is produced by the Petitioner at page 27 of the petition paper-book. Careful perusal of that document shows that on 17.09.2021 one Nagendra Dundappa Pujari has made an affidavit stating that he understands *modi* script and he has examined birth and death register of the year 1930 in which it is stated that on 25.04.1930 a person is born with name of the father as “Abu” and the name of the grandfather is “Chand Suleman Dhawad” and the person is Musalman (as stated in column of caste). The Petitioner claims to be related to this person. Apparently, this is an affidavit signed by the person claiming to know *modi* script and the document of birth and death register itself is not produced in original. Be that as it may. Even assuming that this document can be considered, the Petitioner was unable to explain as to how the surname Dhawad allegedly stated to be existing in the year 1930, thereafter in the course of time never appeared for any of the Petitioner’s close relatives such as father, grandfather or cousin-grand-father, who all used surname Shaikh. In that view of the matter, in our considered opinion, this document having remote reference of ‘surname Dhawad’ is not helpful to the Petitioner’s ‘caste-claim’. Also Petitioner’s relationship with this person cannot be clearly established.

16. Now we consider the Vigilance Cell report. Perusal of the Vigilance Cell report shows that two elderly persons

staying in the Petitioner's village, have stated that according to them, family of the Petitioner was conventionally engaged in making of iron equipment for agriculture. They have further stated that traditional honour to hold a particular instrument (*Sasan-kathi*) is with Mr. Siddhanath Shaikh and marriages take place in surname Shaikh belonging to Dhawad caste.

17. Apart from the statements of the elderly persons from the Petitioner's village that traditional business of Petitioner's family is making iron agricultural instruments, there is no indication about caste of either Petitioner or her birth family *per se*. It is stated that marriages of Shaikh surname family members take place in Dhawad caste. This statement does not help the Petitioner because it cannot be presumed that all Shaikh surname persons are married into Dhawad caste. In any case, the Petitioner is claiming to be Dhawad caste by birth and not by marriage. Perusal of the said report also shows that there is a reference made to one Siddhanath Shaikh of village Kharsudi. It is stated that this person has traditional honour of holding *Sasan-Kathi* which is prepared by Dhawad. This observation is made in concluding paragraph of the report. In the said paragraph it is also stated that the Petitioner is married in 2011 to one 'Imam Hasan Shaikh resident of Dhawadwadi (Kharsudi)'. It is not explained in the said report as to how Siddhanath Shaikh

and Imam Shaikh are related to each other and what significance Siddhanath Shaikh having traditional honour of holding *Sasan-Kathi* has, in the context of Petitioner's caste. In view of this, we are of the opinion that the Vigilance Cell report does not clearly establish or prove that the Petitioner belongs to Dhawad caste.

18. In view of the aforesaid facts and circumstances, since the impugned order has considered the Vigilance Cell report in detail and has also given reasons for not agreeing with the Vigilance Cell report, we find that the judgments relied upon by the Petitioner do not advance the case of the Petitioner. In the writ jurisdiction of this Court, we have to make sure that the authorities established under various Acts, including those for caste scrutiny, act within four corners of law. Aforesaid discussion would amply show that both Caste Scrutiny Committee and Vigilance Cell have acted within their bounds and reasoned orders are passed.

19. In that view of the matter, there is no merit in the petition and the same is dismissed. Rule is discharged. No order as to costs.

20. At this stage, the learned counsel for the Petitioner seeks continuation of interim relief granted earlier.

The interim relief granted on 04.03.2022 and continued thereafter from time-to-time, is extended for a period of four weeks.

(M. M. SATHAYE, J.)

(R. D. DHANUKA, J.)